

BDB:SBB

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | | |
|------------------------|---|-----------|
| DAWN L. PERRY, | : | CIVIL NO. |
| Plaintiff, | : | |
| V. | : | |
| | : | |
| THE UNITED STATES OF | : | |
| AMERICA; RAFAEL LOPEZ- | : | (J.) |
| MONEGRO, | : | |
| | : | |
| Defendants. | : | |

NOTICE OF REMOVAL

AND NOW, comes Bruce D. Bandler, United States Attorney for the Middle District of Pennsylvania, and Shana B. Bellin, Assistant U.S. Attorney on behalf of Defendant, United States of America, and hereby gives notice of the removal of the above-captioned matter from the Court of Common Pleas for Wayne County, Pennsylvania, to this Court, pursuant to Title 28, United States Code, Section 2679. The United States is removing this action on the following grounds:

1. A civil action was filed against this Defendant and others in the Court of Common Pleas of Wayne County, Pennsylvania, which was docketed at Perry v. Yoo, No. 174-Civil-2017. See Complaint attached hereto as Exhibit A.

2. The Defendant named in the action is, among others, Hoon C. Yoo, a doctor employed by Wayne Memorial Community Health Center.

3. Pursuant to the provisions of the Federally Supported Health Centers Assistance Act (FSHCA) of 1992, 42 U.S.C. § 233(g)-(n), the United States Department of Health and Human Services has deemed the Wayne Memorial Community Health Center and Hoon C. Yoo employees of the United States for purposes of the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671, et seq. See Declaration of Meredith Torres attached hereto as Exhibit B. See Deeming Letters attached hereto as Exhibit C.

4. The FSHCA extends FTCA coverage to the grantees that have been deemed covered under Section 233(h) and certain of its officers, employees, and contractors.

5. Section 28 U.S.C. § 2679(d)(2) provides that upon certification by the Attorney General that an employee of the United States was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action commenced in state court shall be removed.

6. The above-captioned action is one which may be removed without bond to this Court pursuant to subsection (d)(2) of Section 2679, Title 28, United States Code, for the reasons that (a) Plaintiff seeks a judgment for damages resulting from the allegedly negligent or wrongful act or omissions of Hoon C. Yoo and others; (b) he was acting within the scope of his employment as an employee of the United States when he was alleged to have provided medical care and treatment to Plaintiff; and (c) the remedy against the United States provided by Sections 1346(b) and 2672 of Title 28, United States Code, is therefore exclusive of any other civil action or proceeding against Hoon C. Yoo for money damages by reason of this lawsuit.

7. The Attorney General has delegated certification authority to the United States Attorneys. 28 C.F.R. § 15.3. In turn, the United States Attorney for the Middle District of Pennsylvania has delegated certification authority to the Chief of the Civil Division, United States Attorney's Office.

8. Kate L. Mershimer, Chief, Civil Division, United States Attorney's Office, has certified that this Defendant was acting within the

scope of his employment when he provided medical care and treatment to Plaintiff. See Certification attached hereto as Exhibit D.

9. Notice of Filing this Notice of Removal has this day been caused to be filed with the Prothonotary of the Court of Common Pleas of Wayne County.

WHEREFORE, the United States respectfully gives notice that the above-captioned matter is hereby removed to the United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,

BRUCE D. BRANDLER
UNITED STATES ATTORNEY

/s Shana B. Bellin
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Dated: June 20, 2017

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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania, and is a person of such age and discretion as to be competent to serve papers.

That on **June 20, 2017**, she served a copy of the attached:

NOTICE OF REMOVAL

by placing said copy in a postpaid envelope addressed to the persons hereinafter named, at the places and addresses stated below, which is the last known addresses, and by depositing said envelopes and contents in the United States Mail at Harrisburg, Pennsylvania.

Addresses:

Plaintiff's Counsel

Edwin B. McDaid, Esq.
255 S. 17th St., Suite 1400
Philadelphia, PA 19103

Counsel for Rafael Lopez-Monegro

Eugene P. Feeney, Esquire
WEBER GALLAGHER
201 Penn Avenue, Suite 400
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/s Shana B. Bellin
SHANA B. BELLIN
Assistant United States Attorney